

**Board of Appeals**

January 4, 2022

Minutes

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**Chairman's Welcome and Media Notification**

Mr. DeTerra opened the meeting at 6:30 p.m. and read the protocol for Zoom meetings and open Public Meeting Law.

**Administrative Business**

**Quorum/Attendance**

Chairman, Peter DeTerra, introduced the members of the Board:

Present: Kenneth Kendall, Daryl Manchester, Peg Cook, Peter DeTerra

Absent: Francis Cox, Jamie DeSousa, Alberto Silva, Ruy DaSilva

**Acceptance of Minutes**

Mr. Kendall made a motion to accept the minutes from December 2, 2021 and was seconded by Daryl Manchester. The motion passed via roll call vote by Kenneth Kendall, Daryl Manchester, Peg Cook, Peter DeTerra (4-0).

Mr. Carmichael spoke of changing D Zone to Velocity Flood Zone. Mr. Carmichael will go over with the Town Clerk.

**Public Hearings**

- 1) Administrative Appeal by Fairhaven Shipyard – 7 Union Street. REF#: ZBA-AA 01: Seeking reversal of zoning determination by the Town of Fairhaven Building Commissioner dated February 20, 2020.

Board Chair, Mr. DeTerra, would like the applicant or applicant's representative present at the next meeting to explain the delay or withdraw without prejudice.

Mr. Kendall made a motion to continue 7 Union Street to February 1, 2022 and was seconded by Mr. Manchester. The motion passed unanimously via roll call vote by Kenneth Kendall, Daryl Manchester, Peg Cook, Peter DeTerra (4-0).

- 2) Administrative Appeal by A1 Crane – 86-88 Middle Street. REF#: ZBA-AA-02: Administrative Appeal from a letter dated April 7, 2020 from the Building Commissioner stating that the operation on the site is in violation of the mixed-use zoning regulations.

Mr. DeTerra would like the applicant or their representative present at the next meeting for an update.

Mr. Kendall made a motion to continue 86-88 Middle Street to February 1, 2022 and was seconded by Mr. Manchester. The motion passed unanimously via roll call vote by Kenneth Kendall, Daryl Manchester, Peg Cook, Peter DeTerra (4-0).

- 3) REF#: ZBA-2022-022: 184 Balsam Street. Applicant & Owner: Robert and Karen Sullivan. Applicant seeks a Variance to construct a dock greater than 75 feet in length due to shallowness of docking area pursuant to Fairhaven Zoning Bylaw 198-32.2(3)(a).

Mr. Kendall made a motion to continue 184 Balsam Street, per the applicant's request, to the February 1, 2022 meeting. The motion was seconded by Mr. Manchester and the motion passed unanimously via roll call vote Kenneth Kendall, Daryl Manchester, Peg Cook, Peter DeTerra (4-0).

- 4) REF#: ZBA-2022-023: 2 Elliot Lane, Map 12, Lots 196-198. Applicant & Owner Sandra Gifford. Applicant seeks a Special Permit under the Fairhaven Bylaw 198-16, to construct a two-floor addition, for the purpose of an in-law suite of approximately 1,400 square feet.

Mr. Kendall made a motion to postpone the 2 Elliott Lane hearing until the end of the meeting to provide a chance for the applicant to appear. The motion was seconded by Mr. Manchester and passed unanimously via roll call vote by Kenneth Kendall, Daryl Manchester, Peg Cook, Peter DeTerra (4-0).

- 5) REF#: ZBA-2022-025: 2 Oxford Street. Applicant and Owner: 2 Oxford Street, LLC. Applicant seeks: (1) Special Permit, pursuant to the Fairhaven Zoning Bylaw 198-32.2, for a proposed 70' fixed pier, 30' gangway and four (4) floats totaling 2500 sq. feet; (2) Variance from 198-32.2(C)3(b) to exceed the 150' maximum pier length to the proposed 215' length; (3) Variance from 198-32.2 C. 7 to exceed the 300 sq. ft. total area of any and all floats to the proposed four (4) floats with 1500 sq. ft. of area; (4) Variance from 198-32.2(C)8 for an increase from the maximum amount of boats not to exceed two (2) as the four (4) floats will accommodate several boats.

Rich Rheume, from Prime Engineering, was present to present plans.

Mr. DeTerra explained to Mr. Rheume that a Board of four members would require unanimity from all four members. He recommended the applicant continue until February 1, 2022, when more Board members are present.

Mr. Rheume agreed and requested to be continued to the February 1, 2022 meeting.

Mr. Kendall made a motion to continue to the February 1, 2022 meeting and was seconded by Mr. Manchester. The motion passed unanimously via roll call vote by Kenneth Kendall, Daryl Manchester, Peg Cook, Peter DeTerra (4-0).

- 6) REF#: ZBA-2022-029: 227 Main Street, Map 16, Lots 74, 78 & 79. Applicant: Chris Thomas. Owner: Fairhaven Housing Authority. Applicant seeks Special Permit under the Fairhaven Zoning Bylaw 198-29(2), to allow parking reconstruction with eight additional parking spaces for residents and visitors.

Chris Thomas, with BSC Group, represented the Fairhaven Housing Authority. This development is located in residential district A. The project consists of repaving their rear parking lot that is accessed on North Street. As part of this paving project, the Fairhaven Housing Authority is requesting a Special Permit for 8 additional spaces. There is a one-way parking way into the parking area at the rear of the building, which loops around to 6 existing spaces to be repaved, along with the 8 proposed spaces. Currently, there are insufficient parking spots, with a total of 22 spaces for 24 elderly units. This lack of parking is dangerous for residents and insufficient for visiting nurses.

Fairhaven resident, Dawn Babbitt of 60 Hedge Street spoke in support of the Fairhaven Housing Authority.

Mr. Deterra made a motion to grant the Special Permit for 227 Main Street and was seconded by Mr. Manchester. The motion passed unanimously via roll call vote by Kenneth Kendall, Daryl Manchester, Peg Cook, Peter DeTerra (4-0).

- 7) REF#: ZBA-2022-030: 114 Sconticut Neck Road, Map 28A, Lot 192. Applicant and Owner: Ronald Oliveira. Applicant seeks a finding from the Board under MGL 40A, Section 6 to allow for increase of area of a nonconforming use by 916 square feet and that the alteration is not more substantially detrimental than the existing nonconforming use to the neighborhood.

Attorney, Nicholas Gomes, spoke on behalf of the applicant, Mr. Oliveira, Trustee. He requested to present to the Board and to obtain feedback for the next meeting. Mr. Oliveira is seeking to make renovations to the two-story building, which suffered fire damage in February 2020, and has since sat vacant. Prior to the fire, the front of the first floor was a convenience store.

The client is seeking to add an additional 916 square feet to the third-floor loft, including a bedroom space and bathroom. Eventually, the applicant would like to convert the property from half commercial, half residential, to a completely residential use. This renovation and addition are out of necessity. This corner of Sconticut Neck Road is very busy and customers pulling in would make this intersection a hazard. A private residence would be more suitable.

This is a unique oversized lot and additional footage will not be a tremendous modification. It is time to turn this property into a productive and positive use. Owner, Mr. Oliveira, has been held back in keeping the property in a safe condition. Before any further investment is made, the applicant is looking for the Board's wisdom. The building should be repaired properly as soon as possible, in order to get it up to code. This is not going to substantially

deviate from the existing bylaw. The strongest factor for Variance approval is neighborhood improvement and traffic safety.

Currently, this is legally a 2.5 story building and adding square footage will provide more livable space.

Mr. Carmichael stated the agenda only states an expansion of a non-conformity, not a change of use, which is illegal. Unless it is expressly granted in the bylaw, MGL, Chapter 48 does not allow a change of use. In order for Mr. Oliveira to legally make this change, he would need to go to the Planning Board.

Mr. Gomes understood the need to go before the Planning Board and is in the petition process. He still wanted to gather Board's opinion, before proceeding. His only request tonight is to vote on the additional 916 square feet in the already residential portion of the house; he would then proceed with a change of use.

Mr. Manchester asked the Building Commissioner's advice.

Mr. Carmichael advised the Board that this is in fact just the extension of a non-conformity within the residential unit, which consists of the second and third floor.

Mr. Kendall did not want to proceed until the petition is presented to the Planning Board.

Ms. Cook understands the applicant is trying to progress in home renovations and would be happy to vote on that appeal.

Mr. Manchester stated the building commissioner's clarification has left him with no concerns.

Mr. Carmichael suggested Mr. Oliveira withdraw without prejudice, to avoid a two-year waiting period.

Mr. Gomes requested to be pushed until next month, after he has a chance to speak with his client in full. He concurred this is just an expansion of non-conforming use for the residential space, within the third floor. Another hearing will provide an opportunity add additional details and present the progress made with the Planning Board.

Mr. Kendall asked if Mr. Oliveira purchased the building after the fire, and whether that constitutes a hardship.

Mr. Gomes believes the hardship is multi-faceted. If no action is taken to fix the fire damage, it will be an exposed and unsafe building. If he is not able to add additional space to the third floor, the property will be undervalued and negatively affect neighborhood real estate values.

Mr. Deterra clarified the building height still has to be under 35 feet.

Mr. Carmichael reiterated that until rezoned, the first floor has to remain a business. The building is currently under an unsafe order and there is a mandate for immediate repairs.

Resident, Steven Mello asked the difference in peak height.

Mr. Gomes stated it is currently approximately 22 feet, so it will be 9 feet higher.

Mr. Carmichael stated this is a three-story home and classified as a two-family. If does become a three family, sprinklers would need to be installed; this would not be cost efficient for the owner. His intentions are to maintain a two family with one unit on the first floor and second unit containing both the second and third floor. The Board is only voting on alterations to the second and third floor.

Mr. Gomes stated he would be happy to answer any questions the residents have and to reach out to the office of Nicholas Gomes.

Mr. Kendall made a motion to continue to the February 1, 2022 meeting and was seconded by Mr. Manchester. The motion passed via roll call vote by Kenneth Kendall, Daryl Manchester, Peg Cook, Peter DeTerra (4-0).

REF#: ZBA-2022-031: 10 Crescent Drive, Map20D, Lot 108. Applicant and Owner: Sandra Pontbriand. Applicant seeks a Variance from the minimum side setback of 10 feet to the 5 feet proposed, pursuant to the Fairhaven Zoning Bylaw 198-18.

Michael Gay, representing owner Sandra Pontbriand, stated she is requesting a side setback of 15 feet from the present 20 feet.

Mr. Carmichael asked for further clarification on the setback to reflect the agenda.

Mr. Gay clarified that the side setback is currently 20 feet, and the intention is to go to 15 feet on both sides. The lot size is 50 feet wide, and the house will be 28 feet wide. This means a 15-foot setback or a 5-foot variance.

Mr. Kendall made a motion to approve the Variance for 10 Crescent Drive and was seconded by Mr. Manchester. The motion passed via roll call vote by Kenneth Kendall, Daryl Manchester, Peg Cook, Peter DeTerra (4-0).

Mr. Kendall made a motion to reopen 2 Elliott Lane and was seconded by Mr. Deterra. The motion passed unanimously via roll call vote by Kenneth Kendall, Daryl Manchester, Peg Cook, Peter DeTerra (4-0).

Mr. Kendall made a motion to continue 2 Elliott Lane to February 1, 2022 and was seconded by Mr. Manchester. The motion passed unanimously via roll call vote by Kenneth Kendall, Daryl Manchester, Peg Cook, Peter DeTerra (4-0).

**New Business:** How many Board members would like a hard copy of the meeting packet mailed to their address. The town is attempting to cut down on mailing costs.

**Action:** For department staff to communicate with the Board on meeting packet mailings.

Mr. Kendall made a motion to adjourn at 6:49 p.m. and was seconded by Mr. Manchester. The motion passed unanimously via roll call vote by Kenneth Kendall, Daryl Manchester, Peg Cook, Peter DeTerra (4-0).